

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL A. KENNEDY,)
Plaintiff,)
v.)
STATE OF ALABAMA)
DEPARTMENT OF)
TRANSPORTATION, *et al.*,)
Defendants.)
CASE NO. 3:22-CV-645-RAH

ORDER

On November 21, 2024, the Magistrate Judge recommended the Motion to Dismiss (Doc. 114) filed by the Defendant identified in the Amended Complaint as “Alabama State Legal Department” and Defendants Steven Marshall, William Patty, Christy Coan, Robert Prescott, Kaasha Griffin, Allison Taylor, and Tony Higgins (“the Defendants”) should be granted and the claims against them be dismissed. On December 6, 2024, Plaintiff Michael A. Kennedy filed Objections (Doc. 142) to the Magistrate Judge’s Recommendation (Doc. 136).

When a party objects to a Magistrate Judge's Report and Recommendation, the district court must review the disputed portions *de novo*. 28 U.S.C. § 636(b)(1). The district court “may accept, reject, or modify the recommended disposition; receive further evidence; or resubmit the matter to the magistrate judge with

instructions.” Fed.R.Civ.P. 72(b)(3). De novo review requires that the district court independently consider factual issues based on the record. *Jeffrey S. ex rel. Ernest S. v. State Bd. of Educ.*, 896 F.2d 507, 513 (11th Cir. 1990). *See also United States v. Gopie*, 347 F. App'x 495, 499 n.1 (11th Cir. 2009). However, objections to the Magistrate Judge's Report and Recommendation must be sufficiently specific to warrant de novo review. *See Macort v. Prem, Inc.*, 208 F. App'x 781, 783-85 (11th Cir. 2006). Otherwise, a Report and Recommendation is reviewed for clear error. *Id.*

Plaintiff's first objection is to the filing of the Motion to Dismiss by Assistant Attorney General Vania Hosea on behalf of the Defendants named in the Motion to Dismiss. He argues that, because Attorney Hosea did not enter a notice of appearance on behalf of all defendants, the Motion should not be considered. Attorney Hosea is an Assistant Attorney General for the State of Alabama and is therefore authorized to file motions on behalf of State defendants. Attorney General Marshall, Assistant Attorneys General Prescott, Griffin, Taylor, and Higgins, and ALDOT Chief Counsel William Patty, are officials for the State of Alabama. Consequently, Plaintiff's objection on this basis will be overruled.

Plaintiff's second objection is to the Magistrate Judge's finding that “there is no indication that, by virtue of past legal advice, [the Defendants] have any authority or responsibility for ALDOT's implementation and enforcement of the FMLA with respect to any prospective relief that may be available under *Ex parte Young*.” (Doc.

142 at 2, quoting Doc. 136 at 12.) He argues that, because Defendants Patty, Coan, Prescott, Griffin, Taylor, and Higgins represent the interests of the State and advise the Alabama Department of Transportation regarding compliance with the law, the Amended Complaint sufficiently alleges a prospective FMLA claim against these defendants. Plaintiff asserts that 29 CFR § 825.301(a) provides that an “employer’s decision to designate leave as FMLA-qualifying must be based only on information received from the employee or employee’s spokesman” and that the Defendants named in the Amended Complaint fit this description. As discussed in the Recommendation, Plaintiff does not allege Defendant Marshall is tasked with responsibility for ALDOT’s ongoing implementation of the FMLA. Nor does he allege Defendants Patty, Coan, Prescott, Griffin, Taylor, and Higgins are responsible for ALDOT’s enforcement of the FMLA. This Court agrees with the Magistrate Judge’s determination that Plaintiff has failed to allege or demonstrate that the Defendants are responsible for the ALDOT’s implementation and enforcement of the FMLA with respect to any prospective relief.

Upon an independent review of the record, including the Magistrate Judge’s Report and Recommendation and Plaintiff’s Objections, it is

ORDERED as follows:

1. The Objections (Doc. 142) are OVERRULED;
2. The Recommendation (Doc. 136) is ADOPTED;

3. The Motion to Dismiss (Doc. 114) is GRANTED;
4. The claims against Defendants Patty, Coan, Prescott, Griffin, Taylor, and Higgins and the Alabama State Legal Department are DISMISSED;
5. Defendants Patty, Coan, Prescott, Griffin, Taylor, and Higgins and the Alabama State Legal Department are DISMISSED from this action;
6. This action is referred to the Magistrate Judge for further proceedings.

DONE, on this the 3rd day of January 2025.



R. AUSTIN HUFFAKER, JR.
UNITED STATES DISTRICT JUDGE